

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

C.S. No. 561 of 2017

1. A. Mumtaz Begum
2. M.B. Hussanara Begum
3. M.B. Jahanara Begum
4. M.B. Anjumanara Begum ... Plaintiffs

Vs.

1. M.B. Zeenathunissa Begum
2. M.B. Mushtaque Ahamed ... Defendants

Plaint filed under Order VII Rule 1 of the Civil Procedure Code, 1908, read with Order IV Rule 1 of Madras High Court Original Side Rules, 1956, praying to pass a judgment and decree:-

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- (i) Partition of the suit properties described in Schedule A, B and C by allotting 6/48 shares to the First Plaintiff, 7/48 shares to the Second Plaintiff, 7/48 shares to the Third Plaintiff and 7/48 shares to the Fourth Plaintiff by dividing the suit properties by metes and bounds as per Mohammedan Law; and

- (ii) Cost of the suit.

For Plaintiffs : M/s. E. Kalpana
For Defendants : M/s. AL. Arbeen Ahamed

J U D G M E N T

The First Plaintiff is the wife of late Mr. M.K. Basheer Ahamed, who died intestate on 23.07.2013, and the Second to Fourth Plaintiffs are her daughters of the First Plaintiff born out of her wedlock with the said Mr. M.K. Basheer Ahamed. The Second Defendant is the son of the First Plaintiff and the said Mr. M.K. Basheer Ahamed. The First Defendant is the daughter of the said Mr. Basheer Ahamed, born through his pre-deceased wife, viz., late Mrs. Afzalunissa. The Plaintiffs have instituted this suit for partition of the properties described in Schedules A, B and C to the plaint that had belonged to the said Mr. M.K. Basheer Ahamed.

2. Though the First and Second Defendants have been served with summons in the suit on 15.08.2017 and 17.08.2017 respectively, they have not entered appearance or filed Written Statement and hence, they were called absent and set exparte by this Court on 16.08.2018. Evidence was recorded before the Additional Master-III on 28.08.2018 and 10.09.2018.

3. The case of the Plaintiffs is as follows:-

(i) The properties described in Schedules A and B to the plaint was inherited by the said Mr. M.K. Basheer Ahamed from his mother late Mrs. Bathula Bee on her demise on 20.09.1991.

(ii) The property described in Schedule C to the plaint was purchased by the said Mr. M.K. Basheer Ahamed from the Tamil Nadu Housing Board by Sale Deed dated 12.05.2004 bearing Document No. 2573 of 2004 in the Office of the Sub-Registrar, Tiruvottiyur.

(iii) In accordance with the Muslim Law of Succession, the First Plaintiff as the wife of the said Mr. M.K. Basheer Ahamed is entitled to one-eighth share of his properties and the residuary seventh-eighth share is to be shared by his son (Second Defendant) and daughters (Second to Fourth Plaintiffs and First Defendant) in the proportion of 2:1 for each person and on that basis, the shares of the respective parties will be as follows:-

<i>Name</i>	<i>Relationship</i>	<i>Position</i>	<i>Shares</i>
A. Mumtaz Begum	Wife	First Plaintiff	6/48
M.B. Hussanara Begum	Daughter	Second Plaintiff	7/48
M.B. Jahanara Begum	Daughter	Third Plaintiff	7/48
M.B. Anjumanara Begum	Daughter	Fourth Plaintiff	7/48
M.B. Zeenathunissa Begum	Daughter	First Defendant	7/48
M.B. Mushtaque Ahamed	Son	Second Defendant	14/48

(iv) The Defendants are not co-operating with the Plaintiffs, despite the requests made and in such circumstances, the suit has been instituted for

partition of the property in the aforesaid proportion and costs.

4. In order to prove the claim of the Plaintiffs, the Second Plaintiff, viz., M.B. Hussanara Begum was examined as P.W.1, and the following documents are marked by her:-

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1	P-1	Photocopy of the sale deed dated 29.06.1932 bearing Document No. 1289 of 1932 in the name of late Mrs. Bathula Bee.
2	P-2	Photocopy of the sale deed dated 28.08.1972 bearing Document No. 1225 of 1972 in the name of late Mrs. Bathula Bee.
3	P-3	Computer generated death certificate of late Mrs. Bathulla Bee died on 20.09.1991 dated 09.09.2018.
4	P-4	Photocopy of the legal heriship certificate of late Mrs. Bathula Bee dated 13.10.1998.
5	P-5	Photocopy of the sale deed dated 12.05.2004 bearing Document No. 2573 of 2004 in the name of late Mr. M.K. Basheer Ahamed.
6	P-6	Photocopy of property tax receipt of Schedule A property dated 13.02.2017.
7	P-7	Original copy of metro water tax receipt series of Schedule A property dated 24.06.2014, 28.02.2015 and 17.02.2016.
8	P-8	Photocopy of property tax receipt of Schedule B property dated 26.06.2014.
9	P-9	Original copy of metro water tax receipt series of Schedule B property dated 19.03.2013 and 11.02.2015.
10	P-10	Original copy of the advocate welfare fund receipt of late Mr. M.K. Basheer Ahamed dated 05.03.2007.
11	P-11	Computer generated death certificate of late Mr. M.K. Basheer Ahamed died on 23.07.2013 dated 09.09.2018.
12	P-12	Original copy of the legal heirship certificate of late Mr. M.K. Basheer Ahamed dated 20.01.2015.
13	P-13	Photocopy of the division of shares from Darul Ifta, Darul Uloom, Deoband as per Mohamedan Law dated 30.12.2013.

5. On a perusal of the contents of the plaint corroborated by the documents marked as Exs. P-1 to P-13 and deposition of P.W.1, it has been proved that the Plaintiffs and Defendants are entitled to partition of the properties of said Mr. M.K. Basheer Ahamed, in the following shares:-

<i>Name</i>	<i>Relationship</i>	<i>Position</i>	<i>Shares</i>
A. Mumtaz Begum	Wife	First Plaintiff	6/48
M.B. Hussanara Begum	Daughter	Second Plaintiff	7/48
M.B. Jahanara Begum	Daughter	Third Plaintiff	7/48
M.B. Anjumanara Begum	Daughter	Fourth Plaintiff	7/48
M.B. Zeenathunissa Begum	Daughter	First Defendant	7/48
M.B. Mushtaque Ahamed	Son	Second Defendant	14/48

6. There shall be a preliminary decree for partition of the suit properties in the aforesaid proportion for the respective parties. Having regard to the relationship between the parties, they shall bear their respective costs.

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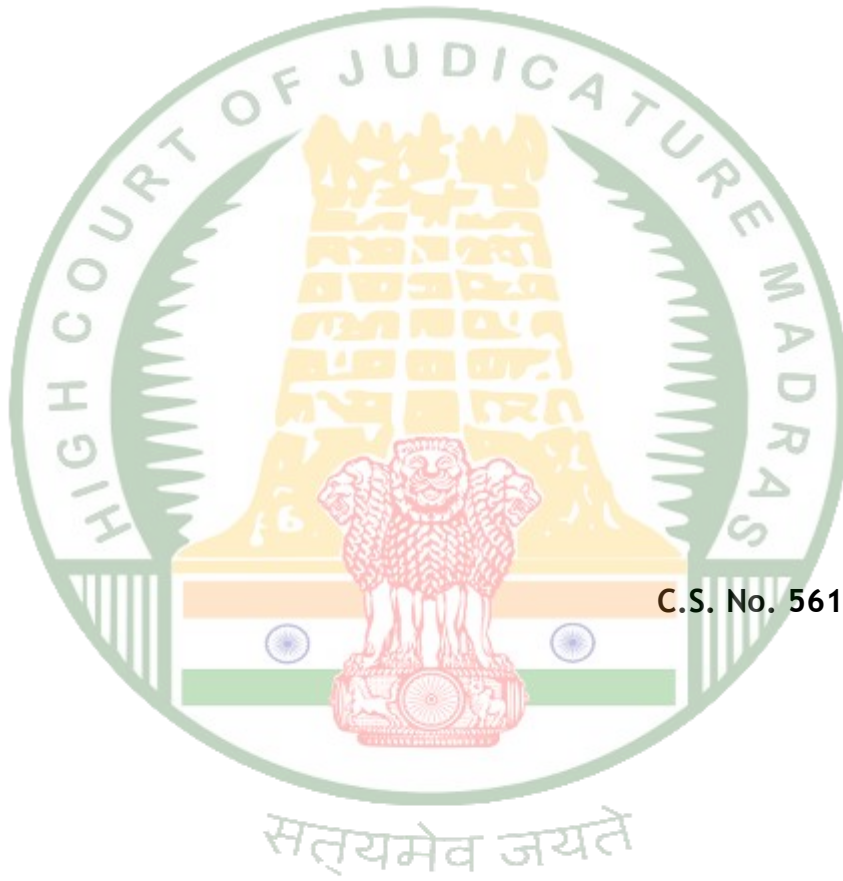
Index : Yes/ No

Internet : Yes/ No

Speaking Order/ Non-speaking Order

P.D.AUDIKESSAVALU, J.

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